

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.198 OF 2021

Sudan Posha Patil
(Since Deceased) Through LRs .. Petitioners

Vs.

Mathew Anthony Karchindgal
& Ors. .. Respondents

...

Mr. Nitin V. Gangal with Mr. Ashok D. Kadam for the
petitioners.

Mr. G.S. Godbole h/f. Mr. Kaustubh Thipsay for the respondent.

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CORAM : SMT. BHARATI DANGRE, J.

DATED : 25TH NOVEMBER, 2021.

P.C:-

1. The petitioner is aggrieved by order dated 13/10/2020 passed by the Civil Judge, Junior Division, Kalyan below Ex-91 in Regular Civil Suit No.35 of 2008. By the said order, the relief sought by the petitioner by taking out an application under Order 1 Rule 10 of the CPC to arraign him as proposed defendant has been rejected by the court by recording that, who shall be added as a party respondent would depend upon the satisfaction of dual test being (a) that there is some relief sought against the party in

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respect of the controversy involved in the proceedings and (b) no effective decree can be passed in the absence of such a party. Applying the above principle to the case of the petitioner, who sought impleadment in the suit for specific performance of agreement dated 08/10/1998 executed by the father of the defendants and his claim that he is a subsequent purchaser through a registered deed of conveyance executed on 02/06/2009, by recording that in a suit for specific performance, none other than the parties to the agreement is necessary, the application filed by the petitioner came to be rejected.

2. My attention is invited to the decision of the Apex Court in **Thomson Press (India) Limited v. Nanak Builders & Investors Private Limited & Ors.** reported in **(2013) 5 SCC 397**, where the impleadment of a party while taking recourse to Order 1 Rule 10 of the CPC has been expounded and, Their Lordships, in paragraph No.54, has observed thus:

“54. The third dimension which arises for consideration is about the right of a transferee pendente lite to seek addition as a party-defendant to the suit under Order 1 Rule 10 CPC. I have no hesitation in concurring with the view that no one other than the parties to an agreement to sell is a necessary and proper party to a suit. The decisions of this Court have elaborated that aspect sufficiently making any further elucidation unnecessary. The High Court has understood and applied

the legal propositions correctly while dismissing the application of the appellant under Order 1 Rule 10 CPC. What must all the same be addressed is whether the prayer made by the appellant could be allowed under Order 22 Rule 10 CPC, which is as under:

"10. Procedure in case of assignment before final order in suit.-(1) In other cases of an assignment, creation or devolution of any interest during the pendency of a suit, the suit may, by leave of the court, be continued by or against the person to or upon whom such interest has come or devolved.

(2) The attachment of a decree pending an appeal therefrom shall be deemed to be an interest entitling the person who procured such attachment to the benefit of sub-rule (1)."

A simple reading of the above provision would show that in cases of a assignment, creation or devolution of any interest during the pendency of a suit, the suit may, by leave of the court, be continued by or against the person to or upon whom such interest has come or devolved. What has troubled us is whether independent of Order 1 Rule 10 CPC the prayer for addition made by the appellant could be considered in the light of the above provisions and, if so, whether the appellant could be added as a party-defendant to the suit. Our answer is in the affirmative. It is true that the application which the appellant made was only under Order 1 Rule 10 CPC

but the enabling provision of Order 22 Rule 10 CPC could always be invoked if the fact situation so demanded. It was in any case not urged by the counsel for the respondents that Order 22 Rule 10 could not be called in aid with a view to justifying addition of the appellant as a party-defendant. Such being the position all that is required to be examined is whether a transferee pendente lite could in a suit for specific performance be added as a party-defendant and, if so, on what terms.”

3. Reliance is placed on the earlier decisions of the Apex Court and by referring to them the point of law has been summarized to the following effect:

“57. To sum up:

57.1. The appellant is not a bona fide purchaser and is, therefore, not protected against specific performance of the contract between the plaintiffs and the defendant owners in the suit.

57.2. The transfer in favour of the appellant pendente lite is effective in transferring title to the appellant but such title shall remain subservient to the rights of the plaintiff in the suit and subject to any direction which the Court may eventually pass therein.

57.3. Since the appellant has purchased the entire estate that forms the subject-matter of the suit, the appellant is entitled to be added as a party-defendant to the suit.

57.4. The appellant shall as a result of his addition raise and pursue only such defences as were available and taken by the original defendants and none other.”

4. In the wake of the aforesaid authoritative and binding pronouncements of law, which learned Judge has simply failed to follow, the impugned order deserves to be set aside. Needless to state that on the petitioner being impleaded as a party defendant, the plaintiff is entitled to urge defences, which are available to him in law, including that the defendant is not a *bonafide* purchaser and that he shall also be bound by the position of law that he stands in the shoes of his earlier vendor.

With the above observation, I say nothing more. Writ petition is allowed by setting aside the impugned order, resulting into allowing of the application vide Ex-91 in Regular Civil Suit No.35 of 2008.

[SMT. BHARATI DANGRE, J.]